

General Information Letter: Sales of service are not protected from state taxation by Public Law 86-272.

January 4, 2005

Dear:

Your letter dated May 19, 2004 has been referred to the undersigned for a reply. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

The above corporation, COMPANY is planning to perform voluntary auto inspections in the State of Illinois. These inspections will be archived into a database for retrieval use by insurance companies. The company will be hiring independent contractors (dealers) to perform this service and the dealers will be forwarding the inspections to the company's New York office for processing. The invoices for this work would be mailed to the corporate office of the insurance company and may not necessarily be within the State of Illinois.

All processing, archiving, administration and collections will be in New York. The company will not have any employees or an office in Illinois. All independent contractors (dealers) will mail or e-mail their work to New York.

The company believes that by Title 86 Section 130.120 of the Illinois Department of Revenue Regulations, collection of sales or occupational tax is not required for this service. Further, the company believes that by Title 86 Section 100.9720 of Illinois Department of Revenue (Regulations), nexus would not apply and the company need not register as doing business in the State of Illinois.

Before the company undertakes this project, it would like to have an opinion from the State of Illinois legal department. The company takes the position that these services are not subject to sales tax. Also, the company's format of this process would not constitute nexus in the State of Illinois. Please advise in writing as to whether or not the company has interpreted the above correctly. Should you have any questions, please contact me at the address and phone number listed below.

**RULING**

The determination whether a taxpayer has nexus with Illinois is extremely fact-specific. Therefore, the Department does not issue rulings regarding whether a particular taxpayer has nexus with the State. However, general information regarding nexus with Illinois for income tax purposes may be provided.

### **Constitutional Jurisdiction**

The United States Constitution restricts a state's power to subject to income tax foreign corporations. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction the state seeks to tax (*Quill Corp. v. North Dakota*, 504 U.S. 298, 112 S. Ct. 1904 (1992)). Similarly, the Commerce Clause requires that a state's tax be applied only to activities with a substantial nexus to the taxing state (*Id.*). Where any part of a foreign corporation's income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/301 – 304), Illinois can demonstrate the connection or nexus necessary to subject a foreign corporation to tax. Therefore, unless protected by Public Law 86-272, a foreign corporation is liable for Illinois income tax where any portion of its income is allocated to Illinois.

IITA section 304 provides for taxable years ending on or after December 31, 2000 that the apportionment factor for a foreign corporation deriving business income from Illinois and one or more other states shall be equal to its sales factor. Section 304(a)(3)(A) defines the sales factor as a fraction, the numerator of which is the total sales of the person in Illinois during the taxable year, and the denominator of which is the total sales of the person everywhere. Department of Revenue Regulations ("regulations") section 100.3700(c)(1) states that gross receipts from sales of tangible personal property are allocable to Illinois for sales factor purposes if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale. Regulations section 100.3370(c)(3) provides that gross receipts from sales other than of tangible personal property are allocable to Illinois if the income producing activity that gave rise to the receipts is performed wholly in Illinois, or the income producing activity is performed in Illinois based on costs of performance.

Your letter indicates that subcontractors (dealers) perform the voluntary auto inspections on behalf of COMPANY the results of which are shipped to the Company's office for archival, processing, and sale. The invoices for this work will be mailed to the office of the purchasing insurance company/companies. These activities constitute sales other than of tangible personal property (i.e., they are services), therefore COMPANY is not protected by P.L. 86-272 from Illinois income tax. Accordingly, COMPANY may be liable for Illinois income tax on all of its income allocable to Illinois in accordance with Article 3 of the IITA.

You should be aware that Section 502(a)(2) of the Illinois Income Tax Act requires that a corporation which is authorized to do business in this State and which is required to file a Federal Income Tax return will be required to file an Illinois income tax return, regardless of whether the corporation is liable for Illinois Income Tax.

The determination of whether a corporation is a foreign corporation that is required to be authorized to do business in Illinois is determined by the Illinois Secretary of State. You may wish to contact the Secretary of State at the following address:

Honorable Roland Burris

Secretary of State  
Business Services Department  
Centennial Building, Room 328  
Springfield, IL 62756

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and wish to obtain a binding private letter ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of 86 Ill. Adm. Code 1200.110(b). If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our web site at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax